



<b>Meeting</b>	<b>Policing Performance Committee</b>
<b>Date</b>	<b>10 June 2025</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>National Conversation on Live Facial Recognition - Update</b>
<b>Presented By</b>	<b>Assistant Chief Constable Steve Johnson, Major Crime, Public Protection and Local Crime</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Appendix A: National Conversation on Live Facial Recognition - Survey Key Findings</b>  <b>Appendix B: National Conversation on Live Facial Recognition – Focus Groups Key Findings</b>  <b>Appendix C: National Conversation on Live Facial Recognition – Summary of Written Submissions</b>

## PURPOSE

This paper outlines the work conducted as part of the Police Scotland, Scottish Police Authority and Scottish Biometrics Commissioner's National Conversation on Live Facial Recognition.

Members are invited to discuss the content of this report.

## 1. BACKGROUND

- 1.1. Facial Recognition technology, including Live Facial Recognition (LFR), uses Artificial Intelligence to identify people in a digital image (such as a photo or video).
- 1.2. LFR uses this technology to assess live video footage of people who are passing a camera. It automatically compares the images of those in the crowd against a bank of lawfully held police images to identify a match against an approved 'watchlist' of people of interest. If a person passes the camera and they are not on the watchlist then the technology pixilates their face from the operator and deletes their image in a fraction of a second. Conversely, if the person is of interest, then the systems alert officers who would engage the person and make appropriate enquiries with them.
- 1.3. At the first Scottish Biometrics Conference in June 2024, the former Chair of the Authority, Martyn Evans, made a commitment to consider the use of LFR in a Scottish Policing context through a national conversation with the people of Scotland.
- 1.4. The early engagement between the Authority and Police Scotland on LFR is in compliance with the [Memorandum of Understanding](#) (MoU) between the two organisations. The MoU guides early and effective identification, and appropriate engagement between the Scottish Police Authority and Police Scotland when it is considering a new and emerging strategy, policy or practice to improve the safety and wellbeing of persons, localities and communities in Scotland, and which are likely to be of significant public interest.
- 1.5. The National Conversation has been informed by the 'Proportionality Principle' as outlined in the [Independent Advisory Group on New and Emerging Technologies in Policing Oversight](#), scrutiny and review workstream [report](#). The 'proportionality principle' is based on what is legal, legitimate and democratic, whilst taking cognisance that many operational policing scenarios involve the need to carefully balance the rights of individuals to address threat, risk and harm.
- 1.6. As part of this early engagement, on 10 December 2024, the Policing Performance Committee received [a paper](#) on the initial work that had been undertaken as part of the Police Scotland (PS), the Authority, and Scottish Biometrics Commissioner (SBC) tripartite LFR tactical Short Life Working Group (SLWG). Work has since progressed from the proposed outline and is discussed in the Timeline section.

## 2. NATIONAL CONVERSATION ON LIVE FACIAL RECOGNITION

2.1. The tripartite approach comprised of Police Scotland, the Scottish Police Authority and the Scottish Biometrics Commissioner. It is important to note that whilst these organisations collaborated to explore public sentiment, their roles and responsibilities remained clearly delineated as set out below:

- Police Scotland's focus was to listen, consider and reach a decision on any future use of LFR by the service.
- The Scottish Police Authority worked alongside Police Scotland to provide support and challenge, aligned to their statutory responsibility 'to ensure the continuous improvement of policing'. This advocacy helps ensure the voices of the Scottish public are part of the process, that the process is transparent and that it maintains or enhances public trust and confidence in policing.
- The Scottish Biometrics Commissioner participated to help inform the conversation with a view to ensuring regulatory compliance with the Code of Practice and the law.

2.2. All three partners were involved in various workstreams of the National Conversation.

## 3. TIMELINE

3.1. In December 2024, a new Police Scotland lead for LFR was appointed and the planning for the National Conversation was reviewed. An updated roadmap was created and set out the following timeline:

Dates	Activity
<b>January to February 2025:</b>	Development of use cases to stimulate conversation on operational policing circumstances in which LFR might add value to public safety. (See section 4 for use cases)
<b>January to February 2025</b>	Development of an <a href="#">overarching paper</a> and <a href="#">summary</a> which sets out publicly LFR usage across the UK, the legislative framework; human rights and ethical considerations and proposed use cases, to stimulate conversation and help inform stakeholder groups and public survey responses.

<b>April 2025</b>	Hosting of five focus groups, with 26 groups or organisations represented. The purpose of the sessions was not to set out any policing perspectives, but instead to listen to, and consider, the responses of those in attendance.
<b>April 2025</b>	In parallel to the focus groups, a public survey was launched to garner public sentiment on the potential use of LFR.
<b>May 2025</b>	National Conversation – in person discussion and inputs from a host of participants and special interest groups, with media in attendance for transparency.
<b>June 2025</b>	Evidence report presented to the Authority's Policing Performance Committee.

## 4. USE CASES

4.1. Three policing scenarios ('Use Cases') where LFR could potentially be applied in an operational context in Scotland were developed to stimulate conversation with the public and partners. These use cases were high level in nature and were created to help enable discussion. The Use Cases were:

- **Use Case 1 – City/Town Centre Nightlife:** Deployment of LFR during specific timeframes, in populated areas where analysis and evidence has highlighted heightened threat, where perpetrators target females and there is a risk of sexual or violent altercations
- **Use Case 2 – High Risk Missing Persons (e.g. young children, vulnerable persons, i.e. elderly, dementia sufferers, etc.):** Deployment of LFR at transport hubs, or where intelligence supports a likely location, to expedite Police Scotland's ability to find, safeguard and support vulnerable or missing persons.
- **Use Case 3 – Largescale Indoor Events:** Deployment of LFR at indoor events where large numbers are expected, to identify known individuals who pose a risk to public safety e.g. potential acts of terrorism, or those subject to restrictions preventing their attendance at the event (e.g. RSOs, CT subjects of interest etc.)

- 4.2. Further detail, including the potential public safety and policing benefits which might be realised from the use of LFR are set out on the SPA website.

## 5. THE CURRENT LEGISLATIVE AND REGULATORY FRAMEWORK IN SCOTLAND

- 5.1. One of the recurring themes throughout the National Conversation was around the legislative and regulatory frameworks that might govern the use of LFR.
- 5.2. The [Police and Fire Reform \(Scotland\) Act 2012](#) outlines the role and duties of Police Scotland and the Scottish Police Authority. It was highlighted in the National Conversation that the role of police in Scotland differs from elsewhere in the UK – namely that the legislation specifically defines the focus on improving “safety and wellbeing” alongside the duties to prevent and detect crime, protecting life and property etc.
- 5.3. There is no single piece of primary legislation which provides a clear statutory framework for the use of LFR in Scotland or the UK as a whole. Any use of the technology would therefore be regulated through a blend of existing legal provisions, namely:
- [Human Rights Act 1998](#)
  - [Equality Act 2010](#)
  - [UK General Data Protection Regulation](#)
  - [Data Protection Act 2018](#)
- 5.4. The legislative framework would also be supported by the Scottish Biometric Commissioner’s [Code of Practice and in line with guidance on law enforcement use of LFR by the Information Commissioner’s Office](#) (such as a [Commissioner’s Opinion](#) on use of LFR in public spaces and [good practice checklists](#)).
- 5.5. A further, detailed outline of the broader legislative framework, case law and regulatory landscape can be found in the [discussion paper](#) published as part of the National Conversation.
- 5.6. The next section discusses the findings from the National Conversation. It should be noted that despite the aforementioned legislation and regulations, there were strong opinions that given the intrusive nature of LFR that would benefit from primary legislation and / or a statutory code of practice, beyond that provided by the Scottish Biometric Commissioner’s Office.

## 6. FINDINGS FROM THE NATIONAL CONVERSATION

### 6.1. SURVEY

6.1.1. Between 10 April to 4 May 2025, a public survey was hosted on both the Authority and Police Scotland's website. The survey was published on social media, and it was also shared by a number of special interest groups amongst their networks. The survey builds on 2021 [polling by the Scottish Biometrics Commissioner](#), which noted that 66% of the public were supportive of Police Scotland using technology in public spaces that can identify people's faces to help find persons wanted by the Police. This increased to 72% in [2025](#).

6.1.2. There were 2,694 responses to the survey. **It should be noted that while the sample is reasonably large given the time period applied, it cannot be considered as representative of the Scottish population.** Findings are therefore indicative only.

6.1.3. Questions focused on levels of comfort with the use of LFR in routine policing; levels of comfort in usage by Police Scotland was only in certain circumstances; level of comfort with usage in each of the use cases; and level of agreement for Police Scotland carrying out further public engagement. Demographic questions were also included, following the same wording as the Your Police Survey.

6.1.4. Key headline findings were:

- **The survey showed the participants were almost perfectly divided in terms of comfort with our potential use of LFR.** 49% were 'very' or 'somewhat comfortable' and 48% were 'somewhat' or 'very uncomfortable' with Police Scotland using LFR in the delivery of policing in Scotland.
- **The operational deployment of LFR e.g. for specific operations or as part of routine policing, did not affect levels of comfort significantly.** Respondents were most likely to have no change in comfort if Police Scotland only used LFR in specific circumstances as opposed to it being part of routine policing in Scotland (48%).
- 30% of survey respondents said they would be more comfortable if Police Scotland used this technology in specific circumstances.
- **In relation to the three specific use cases, the majority of respondents were 'very' or 'somewhat comfortable'**



**with Police Scotland using LFR.** Levels of comfort in these specific scenarios were c.60%.

- **Overall, the majority of respondents felt Police Scotland should continue the conversation on the potential use of LFR in Scotland.** (64%) 'strongly agreed' or 'agreed' with Police Scotland carrying out further public engagement on the use of LFR in Scotland.

6.1.5. There were mixed views in terms of generic use, but higher degrees of comfort with the use case scenarios.

6.1.6. While there were some variations by gender identity and age of respondents, it was not possible to disaggregate the data by other demographics (e.g. ethnicity, disability etc.) due to low sample sizes. Therefore, any future work on this topic would require targeted engagement to ensure a representative view of the Scottish public.

6.1.7. See **Appendix A** for further detail and survey analysis.

## 6.2. FOCUS GROUPS

6.2.1. In April 2025, five focus groups were hosted by Police Scotland, the Scottish Police Authority and the Scottish Biometrics Commissioner's office. A broad range of organisations were invited, with a view to generating an inclusive and engaging conversation. In total, there were representatives present from 26 organisations (e.g. criminal justice, equalities, victims support services, academia, government bodies etc.). We also held individual discussions with some organisations who were unable to attend a focus group. This included one group which represented violence against women and girls.

6.2.2. The groups were chaired by Police Scotland and the Scottish Police Authority and it was made clear from the outset, that the purpose of the sessions was not for Police Scotland or any other tripartite participant to seek to express their views on the potential use of LFR, nor to seek to convince others, but instead that its focus was to listen to the views of those in attendance so that contributions could be considered in reaching any recommendation on how to proceed.

6.2.3. Conversations in the focus groups were both spirited and diverse in nature with a range of views, both in support and concern, expressed. Specifically, the conversation was framed around the following areas:

- the potential impact on Scottish society of Police Scotland using LFR.
- thoughts on the use cases outlined by Police Scotland.
- potential safeguards or other ways in which human rights and ethical concerns might be mitigated.
- views on Police Scotland further exploring the use of LFR; and the level of agreement for Police Scotland creating detailed proposals for the introduction of LFR for further public engagement followed by consideration by the Authority.

6.2.4. Notes taken during each focus group were analysed thematically, with four key themes being identified:

- **Assurance** – There was significant discussion about transparency in LFR usage, governance and accountability of LFR usage, actual or perceived biases of the technology with regards to ethnicity, and the need for a clear purpose for using LFR.
- **Legislation** – Several participants expressed their opinion that there was a need for primary legislation to govern the use of LFR. Discussions also focussed on the democratic basis for LFR, the unique statutory duty of Police Scotland around welfare, and other legislative/regulatory frameworks that could be supported or negatively impacted by LFR.
- **Deployment conditions** - e.g. oversight of LFR use and monitoring/authorisation of deployments and assurance of performance, accuracy of the technology and how to manage bias and misidentification, demonstrable proportionality in deployments, lawfulness of deployment, transparency of deployment, and parameters of use i.e. guiding principles or a prescriptive use case list.
- **Support** – there was mixed support for the continuing of the conversation and /or implementing LFR at some point in the future. There was no unqualified support for LFR from stakeholders, with further detail or assurances being desired prior to any support.

6.2.5. See **Appendix B** for further detail.

### 6.3. WRITTEN SUBMISSIONS

6.3.1. Independent of the aforementioned engagement activities, some organisations provided additional written submissions for which we



were grateful. The majority of these submissions provided further detail on why these organisations did not support the implementation of LFR by Police Scotland.

6.3.2. Key points included: a need for primary legislation; the impact of LFR on human rights; suggested incompatibility of LFR with the Public Sector Equality Duties; the potential for a 'chilling effect' in exercising rights to assembly and expression; concern around accuracy and bias of LFR technology for specific segments of the population (e.g. people from minority ethnic backgrounds or trans/non-binary individuals); suggestions of limited evidence of effectiveness in use elsewhere; and lack of detail on how LFR would be used (e.g. how watchlists are generated).

6.3.3. See **Appendix C** for further detail.

## **7. CONFERENCE**

- 7.1. On 16 May 2025, the Scottish Police Authority, Police Scotland and the Scottish Biometrics Commissioner welcomed approximately 70 delegates to the National Conversation on Live Facial Recognition Conference. Delegates were from a variety of organisations who had been engaged in the National Conversation over recent weeks and months. The purpose of the Conference was to summarise the findings of the National Conversation to date, to share learning from other areas of policing and to consider the views of attendees in forming the recommendation of this report.
- 7.2. The conference was independently facilitated by Professor Niamh Nic Daéid from the Leverhulme Research Centre for Forensic Science, University of Dundee. Inputs covered use of LFR in other jurisdictions and potential regulatory and governance requirements any potential use of LFR would require. Inputs were provided from the Metropolitan Police Service, the National Police Chief's Council, the Information Commissioner's Office, the Scottish Biometrics Commissioner and the Centre for Research into Information, Surveillance and Privacy - University of Stirling.
- 7.3. The afternoon focused on the sharing findings of the engagement activities of the National Conversation followed by a question-and-answer session. Delegates then discussed the findings and their experience engaging in the National Conversation at their tables.
- 7.4. Mirroring much of the engagement, more detail around proposed use of LFR was mentioned by many delegates as part of the table discussions (e.g. detail on how a watchlist is compiled). In

addition, discussions focused on thoughts around evaluation, safeguarding and assurance. While tables were provided these topics separately, discussions tended to cover all topic areas with points raised around:

- How a robust evaluation could be assured.
- The data that would be required to provide robust evaluation and assurance.
- Engagement that should be undertaken (e.g. targeted with certain communities).
- Reporting that would be required should LFR be implemented (e.g. annual report similar to Public Sector Equality Duty).
- Assurance that bias mitigation had been effective.
- The potential role for primary legislation of LFR and independent oversight.

7.5. When asked about feedback on the survey results, there was surprise at the divide on comfort with Police Scotland using LFR in the delivery of policing in Scotland (49% 'very' or 'somewhat comfortable' and 48% 'somewhat' or 'very uncomfortable'). There were also mixed views around Police Scotland's future work in the area, with some delegates wanting the conversation to stop and others wanting it to continue (with some specifying the conversation should continue but this should not yet progress to a consultation).

7.6. Within attendee feedback on the National Conversation in general, there was positivity in it having been conducted, however, there were also areas suggested for improvement (e.g. having more inputs from a human rights or equalities perspectives).

7.7. A full write up of the conference will be made available on the Authority's website.

## **8. CONCLUSION**

8.1. It is clear from the participation in the national conversation that there are a diverse range of views on this matter. Police Scotland are keen to have further internal discussions regarding the operational benefits, risks, issues and mitigations prior to any decision making.

8.2. Police Scotland will now progress this matter, continue to gather evidence and views before developing any future options that can be consulted on and progressed through to implementation as required.

8.3. The Authority is asked to discuss this paper.

## **9. FINANCIAL IMPLICATIONS**

9.1. There are no financial implications in this report.

## **10. PERSONNEL IMPLICATIONS**

10.1. There are no notable personnel implications in this report.

## **11. LEGAL IMPLICATIONS**

11.1. There are no notable legal implications in this report.

## **12. REPUTATIONAL IMPLICATIONS**

12.1. There are no reputational implications in this report.

## **13. SOCIAL IMPLICATIONS**

13.1. There are no social implications in this report.

## **14. COMMUNITY IMPACT**

14.1. There are no community implications in this report.

## **15. EQUALITIES IMPLICATIONS**

15.1. There are no equality implications in this report.

## **16. ENVIRONMENT IMPLICATIONS**

16.1. There are no environmental implications in this report.

## **RECOMMENDATIONS**

Members are invited to discuss the content of this report.

## Appendix A

### National Conversation on Live Facial Recognition - Survey Key Findings

#### Introduction

This report outlines the key headline findings of a survey conducted as part of the National Conversation on Live Facial Recognition being conducted by the Scottish Police Authority, Police Scotland and the Scottish Biometrics Commissioner.

The survey opened on 10<sup>th</sup> April and closed on 4<sup>th</sup> May 2025. In total 2,694 responses were received.

#### Methodology

Quantitative data has been analysed using Microsoft Excel with 'Don't know' and 'Not Answered' responses included in totals and calculations.

#### Demographics

The majority of respondents:

- responded as individuals (99%)
- had not been a victim and/or witness to crime (58%)
- identified as men (53%)
- expressed they were not trans or did not have trans history (83%)
- were aged 35 or over (65%)
- identified as heterosexual (69%)
- had no physical or mental health conditions or illness expected to last for 12 months or more (60%).
- identified as White Scottish (64%)
- stated they had no religion (54%)
- had no caring responsibilities (65%)
- did not have care experience (76%)

#### Quantitative Key Findings

##### Headline

The sample was split on level of comfort with Police Scotland using LFR in the delivery of policing in Scotland. 49% were 'very/somewhat comfortable' and 48% were 'somewhat/very uncomfortable' – see **Figure 1**.

Respondents were most likely to have no change in comfort if Police Scotland only used LFR in specific circumstances as opposed to it being part of routine policing in Scotland (48%) – see **Figure 2**.

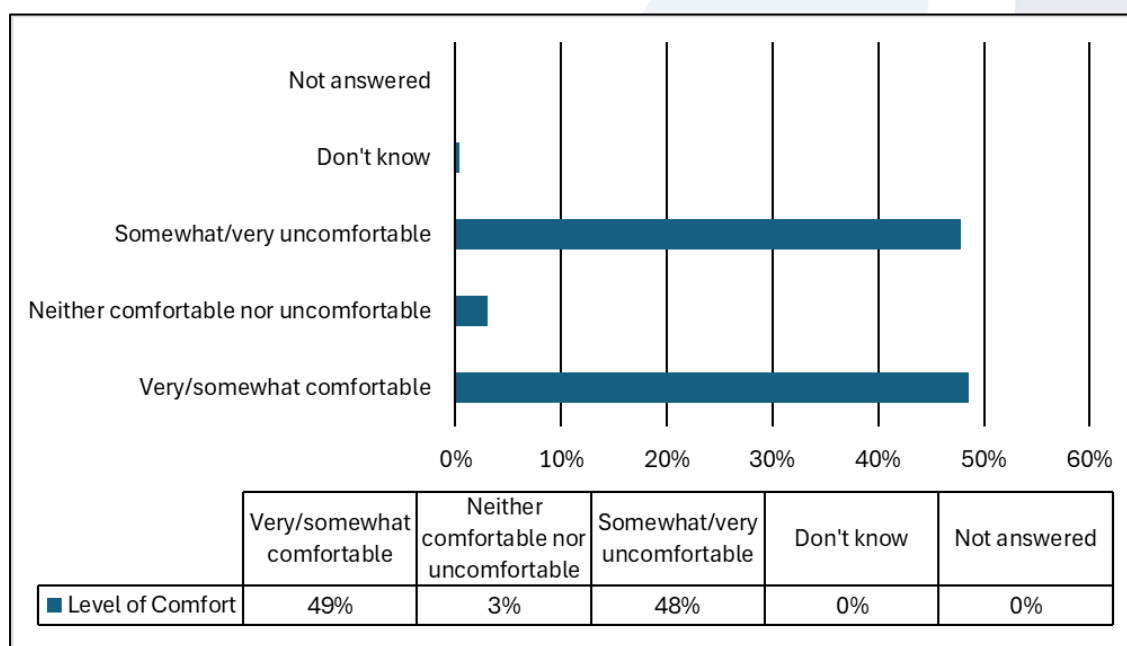
The majority of respondents felt 'very/somewhat comfortable' with Police Scotland using LFR in all the use case examples outlined.

- Use Case 1 – 60% - see **Figure 3**
- Use Case 2 – 59% - see **Figure 4**
- Use Case 3 – 60% - see **Figure 5**

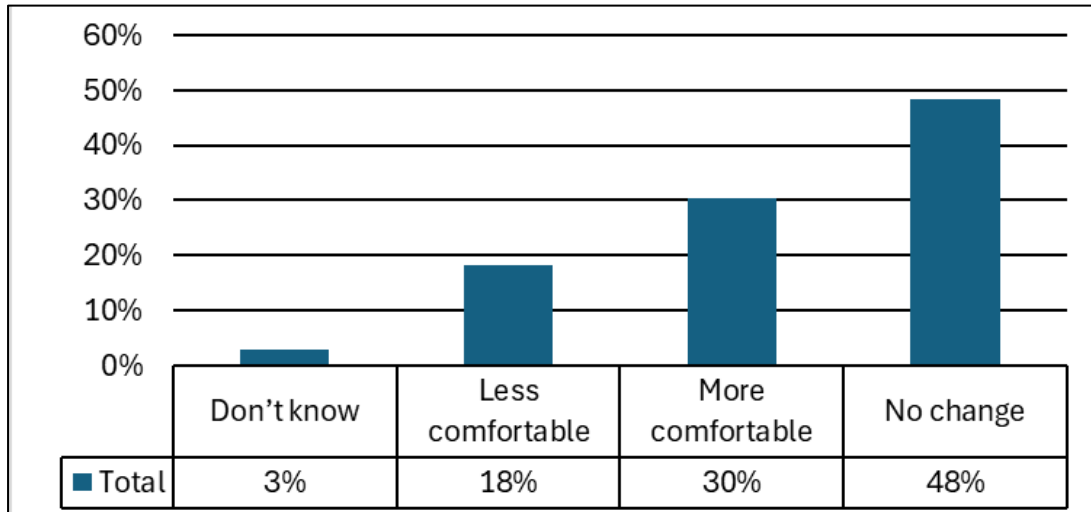
The majority of respondents (64%) 'strongly agreed/agreed' to Police Scotland carrying out further public engagement on the use of LFR in Scotland – see **Figure 6**.

## Charts

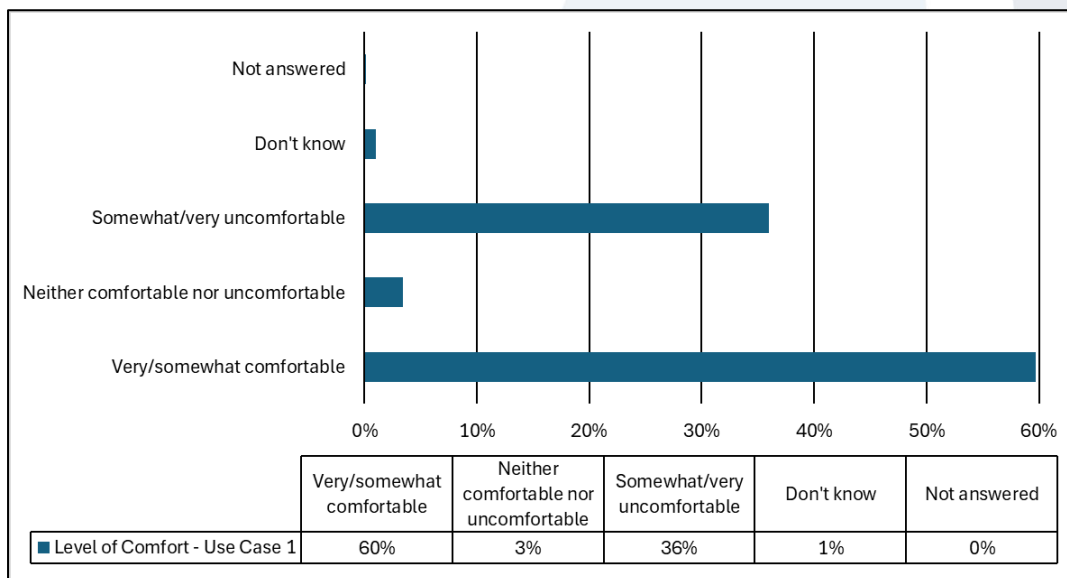
**Figure 1: To what extent would you be comfortable with Police Scotland using live facial recognition in the delivery of policing in Scotland? (n=2694)**



**Figure 2: Would you feel more or less comfortable if Police Scotland only used live facial recognition in specific circumstances as opposed to it being part of routine policing of Scotland? (n=2694)**

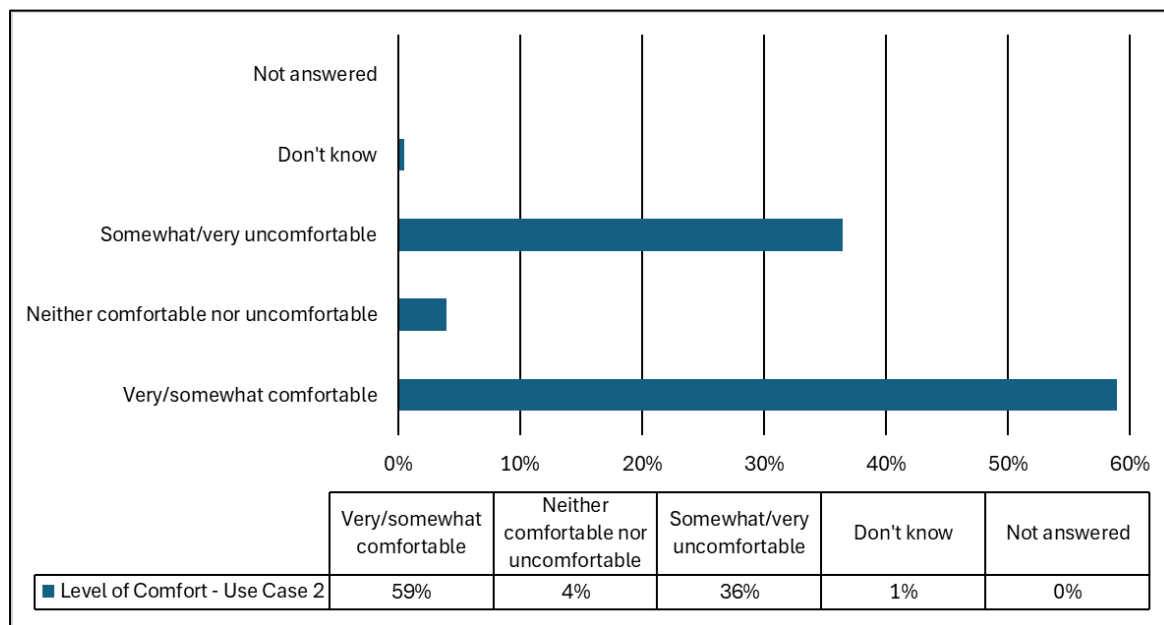


**Figure 3: Use Case 1 - During specific timeframes, in populated areas where analysis has highlighted heightened threat, where perpetrators target females and there is a risk of sexual or violent altercations (n=2694)**

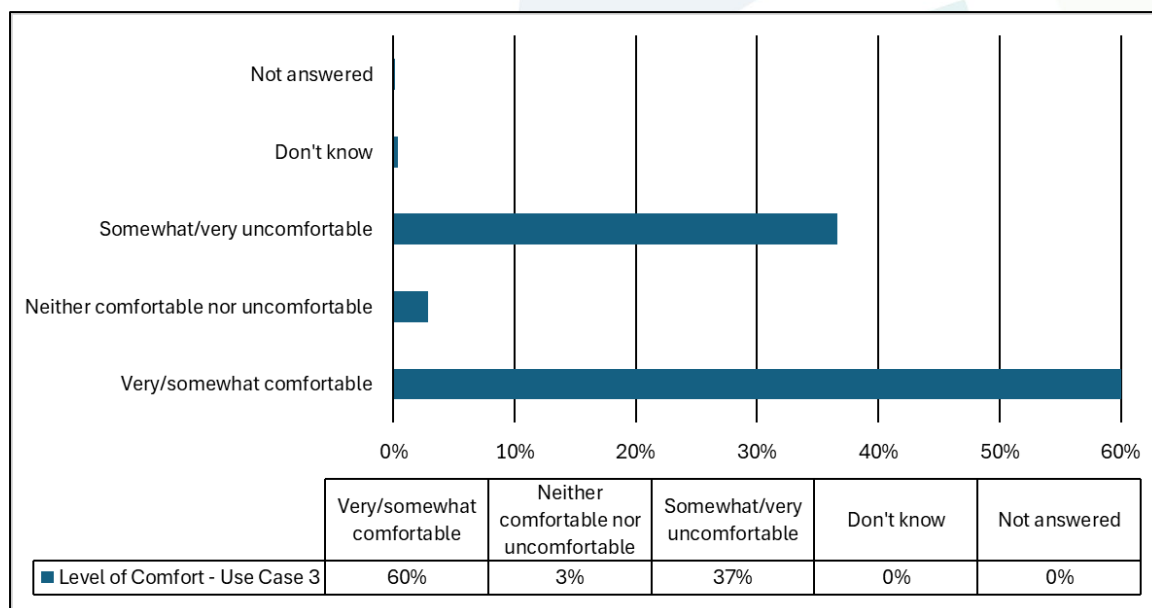




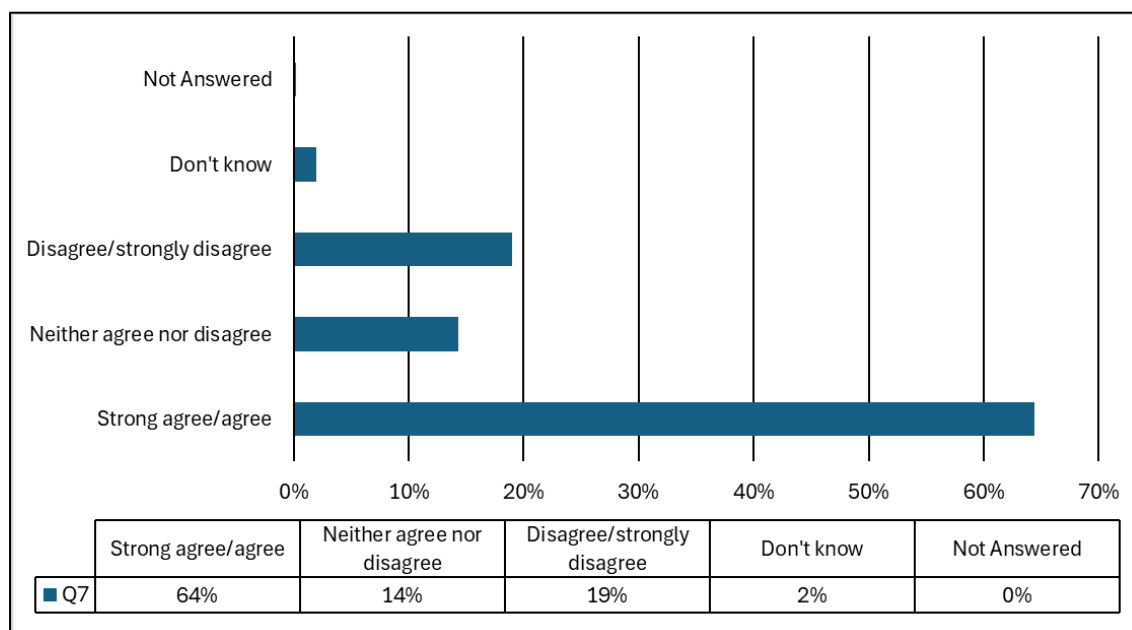
**Figure 4: Use Case 2 - Deployment of LFR at transport hubs, or where intelligence supports a likely location, to expedite Police Scotland's ability to find, safeguard and support vulnerable or missing persons (n=2694)**



**Figure 5: Use Case 3 - Deployment of LFR at indoor events where large numbers are expected to identify known individuals who pose a risk to public safety, potential acts of terrorism, or those subject to bail conditions or restriction orders preventing their attendance at the event (e.g. Registered Sexual Offenders, Counter Terrorism watchlists, etc.).**



**Figure 6: To what extent do you agree or disagree that Police Scotland should carry out further public engagement on the use of live facial recognition in Scotland? (n=2694)**



## Appendix B

### National Conversation on Live Facial Recognition – Focus Groups Key Findings

#### Introduction

The Scottish Police Authority and Police Scotland held five focus groups during April 2025 as part of the National Conversation on Live Facial Recognition (LFR). We also held individual discussions with some organisations who were unable to attend a focus group. In total we engaged with representatives from 27 organisations representing a variety of sectors (e.g. criminal justice, equalities, victims support services, academia etc.). A full list of the organisations who participated is available at the end of this paper.

In total, four main themes became apparent in the discussions. These were centred around:

- Assurance
- Legislation
- Deployment conditions
- Support

This paper outlines the subthemes identified underneath the four main themes. Given the cross-cutting nature of the discussions, and the many facets to this topic, there will be some overlap between sections.

#### Methodology

The notes from the focus groups and discussions were collated and thematically analysed to identify the main overarching themes. These main themes were then thematically analysed to identify subthemes. Both the main themes and subthemes were subjected to intercoder reliability testing.

#### Results

##### Assurance

Underneath the main theme of assurance, there were four subthemes identified.

##### Transparency

Transparency was a key point across all focus groups. It related primarily to how LFR would be operated and how that was communicated

accessibly to the public and those subject to LFR (e.g. notification to those in an area subject to LFR, the rationale for those being on a watchlist, who the information garnered via LFR is shared with etc.). It was clear that there needed to be transparency around what police would be allowed to use LFR for and what they were not allowed to use it for to prevent mission creep and to manage expectations of victims. If LFR was used in a way that departed from a legitimate use, then documentation justifying that departure was noted to be needed. The need for clarity on the operational necessity for LFR as opposed to other policing methods was also expressed. A clear admission and acknowledgement of potential issues with the technology, along with an assurance that they were being addressed, was also highlighted (e.g. limitations, potential bias etc.). Regarding deployments, there was an interest in having oversight around the cumulative impact of deployments, not just on individual deployments. There was also the suggestion of a central register documenting the use of LFR. A request for Equality and Human Rights Impact Assessments (EqHRIAs) for all deployments was also raised.

### **Governance and Accountability**

Governance and Accountability related largely to guardrails that could be applied should Police Scotland decide to implement LFR at some point in the future. There were discussions around having an independent body for authorising use of LFR (e.g. with experience in human rights) along with the potential for courts/judicial authorisation for LFR deployment, rather than just internally in Police Scotland. If authorisation was internal to Police Scotland, it was stated it would need to be a clear and transparent process. Statutory duties were raised, such as the role of the Public Sector Equality Duty (PSED) requirements (e.g. EqHRIA) along with Data Protection Impact Assessments (DPIA) in the implementation and governance of LFR. It was noted there would be a need to retain the robustness of the authorisation process to prevent it becoming a 'box ticking' exercise. There was also caution around created new layers of scrutiny that may not be required or add value depending on the frequency of LFR use.

As well as authorisation, the need for an independent body to review the use of LFR and the appropriateness of deployment (e.g. effectiveness and efficiency) and for independent scrutiny by those with human rights/data protection expertise was also expressed. It was highlighted that post hoc reflections and processes for accountability during deployment, along with a written rationale or log for use, was also important. An annual report by an independent body on usage and review of LFR (with a human rights focus) was suggested, with mention of corresponding powers should concerns be raised in the report. A right to redress with accessible procedures was also stated to be needed.

There was also discussion around utilising an independent group to consider the adoption of technology like LFR, e.g. the Police Scotland Independent Ethics Advisory Panel, along with developments in this space outwith Scotland.

## **Bias Mitigation**

The potential bias with LFR technology and its mitigation became a key point in terms of barriers to assurance. It was made clear by participants that there would need to be trialling, and investigation of any technological solution adopted to provide LFR to ensure it did not contain bias and that the Public Sector Equality Duties were being met. While a 'human in the loop' (whereby an officer is involved prior to an approach of someone identified via LFR) was mentioned as a possible safeguard, it was highlighted that human error was also a possibility and it was important to address this.

While there was the report from the [National Physical Laboratory](#), it was highlighted that it was not peer reviewed and other reports note a difference in performance of LFR technology depending on ethnicity.

Therefore, it was stressed that there would need to be additional scrutiny and acknowledgement of potential bias and issues, with a point raised that this should be made available to regulatory bodies to ensure statutory duties are being fulfilled.

## **Purpose**

Having a clear purpose for LFR was raised in many of the focus groups. Similar to the subtheme of transparency, this included being clear on the operational need for LFR (e.g. a prescriptive list of offences LFR can be deployed for) and what it was achieving that conventional policing could not (e.g. could the same outcome be achieved via other means). There was caution that if there was a list of offences that LFR could be used for, then historically these lists have expanded over time. It was also made clear that there would need to be evidence to justify the use of LFR, with no usage where the sole justification was that it would be helpful to law enforcement.

## **Legislation**

Under the Legislation theme, five subthemes were identified:

- Primary legislation
- Democratic basis
- Police and Fire Reform (Scotland) Act 2012
- Trust/Confidence

- Other legislative/regulatory frameworks

## Primary legislation

Across several focus groups, the lack of primary legislation and a current lack of legal basis governing the use of LFR was raised as a concern by participants, with the suggestion that no move to introduce LFR is considered prior to the introduction of primary legislation.

The need for primary legislation was viewed as being essential due to the potential for interferences with right to privacy, freedom of expression and assembly, and how this may have a chilling effect with regards to protests. Primary legislation was viewed as being important due to its novel nature in a policing context, combined with its potential for intrusion, and that a higher threshold must be met legislatively to oversee its introduction. Some also raised that a lack of primary legislation may lead to an increased likelihood of legal challenge and an erosion of public trust.

The case for primary legislation also referenced the Protection of Freedom Act (2012) that regulates fingerprints, with the view that LFR also warrants similar legislative guidance.

Some also mentioned sunset clauses in legislation, but raised concerns with regards to the efficacy of such clauses. There was also cautioning that primary legislation would require further consideration in relation to the impact on special category data (e.g. children and young people). Some also suggested that any legislation or code of practice introduced should govern the broader use and exploration of technology in policing. This lack of legal basis was highlighted with regards to how this lack of legal basis may not satisfy an intrusion on human rights, with one participant emphasising that such protections exist to protect minorities. In particular, some raised concerns as to how other pieces of legislation, such as the Human Rights Act, may be used to justify the use of LFR. Some suggested that Police Scotland speak to Scottish Government and UK Government to introduce primary legislation.

Participants also raised concerns that if Police Scotland produced its own guidance on LFR use that this would not be sufficient protection for the use of LFR.

It was understood by some participants that there may be a decision by Westminster to introduce legislation that would govern the use of LFR in policing that may make for a clearer landscape. This also related to ongoing court proceedings in England and Wales, with some participants



suggesting that any decision to progress should await the outcome of these proceedings.

Some argued that a framework to support LFR could be made through existing legislation or frameworks.

### **Democratic basis**

Participants also raised the lack of parliamentary oversight of LFR and that it is inappropriate to be introduced as there is no democratic mandate and that the use of LFR is a political decision. Some participants also noted the Justice and Home Affairs Committee in the UK Parliament stated that there is an insufficient democratic basis for LFR.

Some participants emphasised the need for a national conversation at Scottish Parliament level given how significant a shift this would be in policing and its potential for intrusion of human rights and private life.

### **Police and Fire Reform (Scotland) Act 2012**

Focus groups considered the provisions within the Police and Fire Reform (Scotland) Act 2012 and the unique legislation in Scotland that considers wellbeing of people of Scotland, which is different to other jurisdictions. Some argued that Police Scotland has a duty to consider new and emerging technology (even beyond LFR) in pursuit of delivering the best service in line with statutory duties.

### **Trust/ confidence**

The lack of primary legislation was argued by some as having a potentially negative impact on public trust and confidence, particularly where this leaves Police Scotland vulnerable to legal challenge. To positively influence public trust, one participant suggested raising public awareness of how LFR may impact different groups would be positive.

### **Other legislative/regulatory frameworks**

Throughout the five focus groups, discussions covered other legislative or regulatory frameworks that may be supported, or be negatively impacted, through the use of LFR.

This included frameworks included the Scottish Biometrics Commissioner's Code of Practice, and ensuring compliance with other legislation through completion of relevant Impact Assessments.

Other frameworks such as Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) were emphasised as being robust frameworks already in place that Police Scotland must adhere to and that could provide assurance. In addition, some legislation that Police Scotland were encouraged to consider included the EU AI Act. Some also mentioned the impact on the PSED and that authorities need to give 'due regard' but felt that the implications of LFR would go beyond that requirement.

Broader conversation related to pieces of legislation such as UK General Data Protection Regulation (UK GDPR) and ensuring technology passes any strictly necessary threshold. It was noted by some that policing would need to satisfy a purpose test, namely: is there a legitimate, clear policing purpose for using this technology and is it strictly necessary? Participants noted that any use of LFR would need to consider the impact on these areas to assess whether LFR deployment is appropriate.

### **Deployment conditions**

The following subthemes were identified under deployment conditions:

- Oversight
- Proportionality
- Lawfulness
- Transparency
- Parameters for use

### **Oversight**

The subtheme under deployment conditions that was discussed in most detail was oversight. Participants referenced the importance of completing key documents, such as an EqHRIA to ensure the impact on individuals is considered. Some also mentioned the importance of gathering appropriate data and insights are utilised where LFR is deployed.

A key aspect of the discussion ensuring the correct processes are in place for the authorisation of LFR – whether this would be through considering new layers of scrutiny or through existing mechanisms. In particular, this related to ensuring there is appropriate seniority of the police officer authorising the use of the technology and when in the investigative process this would be considered. Participants discussed whether there should be an additional level of authorisation or approval that should be implemented, with some of the view that additional approval levels should be implemented, and others cautioning that existing governance could be utilised. It was noted by one participant that this sign off can often not be as robust as it should be, and that this should be considered.

Authorisation also considered who in policing would make the decision to deploy LFR when known risks against specific groups existed. Some participants were of the view that authorisation of LFR use should not be done solely by Police Scotland or overseen by the Scottish Police Authority – rather, this deployment decision would be made through judicial processes or independent experts.

Participants also raised that Police Scotland should make clear how LFR will be approved for use, and whether this will be on a case-by-case basis or through guiding principles.

Human-in-the loop decision making was also viewed as a key aspect of LFR use to reduce an overreliance on the technology. This also included ensuring that Police Scotland does not limit decision makers to police officers but to also expand this to staff.

Oversight also comprised of discussion on ensuring the performance of the technology and that LFR is adequately tested to ensure its accuracy is sufficient, and how to manage bias and misidentification. This was considered particularly relevant with regards to reported racial inaccuracies that have been reported for LFR technology and inbuilt biases of LFR. As such, it was viewed as important to provide the public with information on how the decision to use LFR is made. Some called for a more scientific approach to understand how effective LFR is.

The importance of maintaining adequate logs and/or rationale for the deployment of LFR was also mentioned, along with the overall auditability of the processes and ensuring adequate data and insights are captured. Oversight also considered the importance of defining the use of LFR and how information relating to individuals not on watchlists is managed. The importance of providing adequate oversight was viewed as being vital in maintaining public trust and confidence.

Broader guardrails with regards to oversight considered how use cases may expand and how LFR may be used for broader purposes than originally intended, with some noting that there is a prescribed list of offences, however historically this can expand. This related to broader points on the clarity of the purposes of LFR, and who will evaluate its performance and deem whether deployments are achieving desired outcomes. Others detailed the importance of Codes of Practice rather than use cases for LFR.

This also broadly related to wider surveillance processes, such as RIPSA, and ensuring appropriate safeguards are in place.

## Proportionality

Participants discussed the importance of proportionality in the context of deployment conditions. Some explained that they believed that LFR could be used, but that it should be used proportionately. This particularly related to where LFR may be used in the context of 'serious criminality', however participants cautioned against scope creep due to the potential impact of this on proportionality of LFR.

Several participants queried the difference in terms of benefits of using LFR in comparison to a standard policing approach and whether LFR would be a proportionate alternative. In addition, this also related to the number of people arrested through LFR and whether this warranted the level of intrusion that is caused by LFR. The proportionality of LFR was also discussed with regards to its impact on human rights (specifically freedom of expression, privacy and discrimination) and whether this was sufficient grounds for its use.

Participants specifically referred to legislation such as the Human Rights Act (1998), and the EU AI Act, which also highlights the permissible crimes that would mean the use of LFR was proportionate. One participant also raised the Information Commissioner's view of police use of LFR, and that it should not be used purely down to its availability, efficiency or capacity to incur savings. One participant raised that lawfulness and proportionality are interrelated in how they impact public trust. The importance of a robust 'proportionality test' was emphasised.

## Lawfulness

Another subtheme that emerged under deployment conditions was the lawfulness of LFR.

Some participants noted that they understood that LFR could provide benefits as a policing tool, provided its lawful use. Participants cautioned that RIPSA guidelines must be adhered to. Lawfulness also considered the impact of LFR on vulnerable members of the public and whether this could provide some benefits in some cases, but also that it may have implications in how it impacts groups such as children and young people. Some also highlighted a report published by the Justice Sub-Committee that there was no justifiable basis for Police Scotland to invest in LFR due to concerns in racial and gender bias, and overall inaccuracy.

## Transparency

The transparency subtheme considered the importance of engaging with the public prior to deployments to ensure public awareness and understanding with regards to what LFR is. In particular, there should be

transparency and openness with the public about how LFR is used and the criteria for its use, why it is being used by policing, and making it obvious to the public that it is in use, with specific attention paid to ensure that this communication is accessible to all. For example, some participants questioned whether LFR would be in permanent use or whether it would be at specific points. Transparency should also relate back to oversight and assuring the public that there are appropriate safeguards in place. This also included providing detail to the public on how the technology is used and how the information gathered is used by policing. Transparency also broadly related to accountability and auditability of processes.

### **Parameters of use**

Key to the discussions on LFR was clear parameters for its use. Groups varied on whether they believed an overarching code of practice with principles guiding use or the development of distinct use cases would be most appropriate, as some stressed that other police use of LFR does not have clear guidelines. However, some raised the point that Police Scotland may not wish to constrain itself by detailing narrow use cases from the beginning. Some raised that this may result in scope creep, which could impact trust. It was highlighted that particularly with regards to other uses of LFR, the uses should not continue to expand and change, and the thresholds around use.

Parameters of use also considered the guidance on the crime types it is used for, with some suggesting that it is not used solely in instances of major crime, which relate to the overall use cases and code of practice. However, others raised concerns about LFR being used in broader circumstances, particularly where LFR may be used with regards to children and the potential for overcriminalisation of children. Furthermore, some suggested that LFR should be considered through the lens of harm to individuals, as opposed to the crime type. This relates to the justification for the use of LFR.

Specific parameters for its use included discussion on where it would be run, for how long and oversight of this. This was viewed to be of importance to victims of crime, to ensure that they are aware of situations where LFR may be used. In addition, some queried the equity of service across Scotland and whether it could be rolled out in an equal way.

Throughout the focus groups, participants highlighted challenges in being able to discuss the use of LFR in detail due to the high-level nature of the use cases. If future discussion on LFR is agreed upon, participants emphasised that further detail and specificity on the parameters of use of LFR would be beneficial.



Some critiqued the use cases presented for discussion. Some argued, particularly in relation to Violence Against Women and Girls (VAWG), that the use cases would not tackle the general occurrence of VAWG, for example, as this does not tend to occur in public places. These scenarios were thought by others to be broad and covering large public spaces and as such were difficult to discuss in detail.

Parameters of use also considers the use of watchlists. Participants raised concerns regarding the size of watchlists and to ensure these are proportionate and only used in cases of serious crimes. This also related to transparency of how people may be on a watchlists and understanding how such data is used by police.

## **Support**

There was mixed support across the focus groups and discussions for Police Scotland continuing the conversation and/or implementing LFR at some point in the future.

Across the focus groups and discussions, there was no unqualified support for Police Scotland implementing LFR at some point in the future, with participants expressing a need to see further detail on the matter (e.g. policy for use) before passing judgement.

## **Focus Group Organisations**

Biometrics and Forensics Ethics Group (BFEG)  
Big Brother Watch  
British Deaf Association  
Crown Office and Procurator Fiscal Service (COPFS)  
Convention of Scottish Local Authorities (COSLA)  
Coalition for Racial Equalities and Rights (CRER)  
Centre for Research into Information, Surveillance and Privacy (CRISP) –  
University of Stirling  
Children and Young People's Centre for Justice (CYCJ)  
Children and Young People's Commissioner Scotland (CYPCCS)  
Disability Equality Scotland  
Equality and Human Rights Commission (EHRC)  
Equality Network



His Majesty's Inspectorate of Constabulary in Scotland (HMICS)  
Home Office  
Information Commissioner's Office (ICO)  
Leverhulme Research Centre for Forensic Science, University of Dundee  
Police Investigations and Review Commissioner (PIRC)  
Retailers Against Crime  
Scottish Biometrics Commissioner  
Scottish Government  
Sentrysis  
Scottish Human Rights Commission (SHRC)  
Sikhs in Scotland  
SPA Forensic Services  
Swinburne University  
University of Southampton  
Victim Support Scotland

## Appendix C

### National Conversation on Live Facial Recognition – Summary of Written Submissions

#### Introduction

In addition to the five focus groups held with representative organisations and stakeholders and a national survey, written submissions were received as part of the national conversation.

#### Details of submissions

The majority of written submissions provided further detail on why these organisations were not supportive of the implementation of live facial recognition (LFR) by Police Scotland. A summary of key points includes the following:

- The need for primary legislation and that the current legislative framework does not provide sufficient legal basis for LFR. This also includes how LFR should be used, for what purposes, and how it would be evaluated and scrutinised.
- Overall impact on human rights, including Articles 5, 6, 8, 10, 11, 14 of the ECHR and Articles 2 and 3 of the Universal Declaration of Human Rights, and concerns that the impact on these rights cannot be balanced with necessity and proportionality.
- Incompatibility with Public Sector Equality Duties.
- Potential 'chilling effect' impacting individuals' choice in exercising their freedom of right to assembly and expression.
- Concerns around the overall accuracy of LFR technology, and that accuracy and bias disproportionately impacts certain communities. This specifically relates to research indicating potential racial and gender biases in the technology, as well as potential inaccuracies in relation to trans and non-binary persons. There were also concerns on the impact of low lighting and face coverings on the accuracy of LFR. This was specifically relating to disabled or immunocompromised people who may wear face masks for their safety or those who may wear face coverings for faith-related or cultural reasons.
- Potential misidentification of women and individuals from Black and Minority Ethnic (BME) backgrounds. Concerns were also raised in relation to people who are transgender who may not carry identification that corresponds with how they identify.
- Negative impacts on relationships between Police Scotland and certain communities, particularly individuals with intersecting negative relationships with the police. The potentially negative

impact in relationships and trust in policing was specifically reiterated with regards to LGBTIA+ and black and minority ethnic communities.

- Impact on children and young people.
- That human-in-the loop decision making is not a sufficient guardrail.
- Limited evidence for the use of LFR as a deterrent of crime, particularly in relation to the proposed use cases. In addition, how LFR will function as a deterrent or preventative measure when not all individuals potentially likely to cause harm may be on watchlists.
- Clarity on how watchlists are defined and managed, and potential for racial disparities of watchlists.
- Information governance, data protection and consent to data processing.
- Admissibility of LFR evidence in court trials.
- Scope creep beyond identified use cases.
- An overreliance on technology, reducing police presence at protests with a preference for alternative policing approaches.
- References to LFR use by other police forces in the UK and concerns around evidence of its efficacy.
- Clarity of cost vs benefits for the use of LFR.
- Concerns that public polling referenced in the paper may present an inaccurate public opinion due to a lack of understanding of LFR by the general public.
- Comment on the discussion paper produced by the Authority and Police Scotland, relating to a misquote that has since been corrected, and comments on the overall paper.

Whilst most submissions were clear in their stance that LFR should not be implemented, some safeguards were suggested. Safeguards suggested across two written submissions included:

- **Authorisation:** Independent authorisation, including judiciary sign off or a two-stage process by public bodies. Have a clear authorisation environment (application based, assessment/approval by senior officer of lawfulness, proportionality, and necessity). Development of detailed authorisation records.
- **Guardrails and transparency:** Ensuring that independent safeguards are in place (e.g. Information Commissioner's Office, Scottish Biometrics Commissioner, Investigatory Powers Commissioner's Office) and that any decision is always made by a human. There should be a level of public reporting of the outcomes from deployments.

- **Technology limitations:** Ensuring that any solution has been independently certified as non-discriminatory.
- **Independent evaluation:** Any implementation should not be 'self-proclaimed' as a success. Suggestion that LFR is independently evaluated 12 months after any introduction.
- **Watchlists:** Individuals should not be added to watchlists on suspicion alone, and there should be continual review and oversight of watchlists. Having clear policy and processes around how watchlists are populated and approved, alongside image quality standards.
- **Right to be informed:** Data subjects must be informed of the processing of their data. Requirement to consider a strategy to convey this (e.g. example signage at deployments).
- **Public and political acceptability thresholds:** Any policy should be based on the principle of policing by consent and should mirror acceptability thresholds. For example, if the public were opposed to the use of LFR on fixed town centre CCTV. If any further work or conversation is undertaken, meaningful and extensive public consultation with stakeholders, civil society organisations and the general public. Co-design and two-way feedback with respondents and the production of more detailed evidence to support respondents.
- **Right to redress:** A right of redress recognising that errors may be made by the technology or those in a decision-making capacity.